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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/811,360	03/16/2001	Eugene M. Wolf	2502440-991501	7725
29585	7590	05/12/2005	EXAMINER	
DLA PIPER RUDNICK GRAY CARY US LLP 153 TOWNSEND STREET SUITE 800 SAN FRANCISCO, CA 94107-1907			BLANCO, JAVIER G	
		ART UNIT	PAPER NUMBER	
		3738		

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/811,360	WOLF, EUGENE M.
	Examiner Javier G. Blanco	Art Unit 3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 22 February 2005.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1, 4-6, 8-25, 28-39, 41-43, 50-52, 54, and 55 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1,4-6,8-25,28-39,41-43,50-52,54 and 55 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. \_\_\_\_.  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/22/2005.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other:

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 22, 2005 has been entered.

### ***Response to Amendment***

2. Applicant's cancellation of claims 44-49 in the reply filed on February 22, 2005 is acknowledged.
3. Applicant's amendment of claims 1, 4, 6, 8, 16, 23-25, 28, 29, 31, 42, 43, 50, and 54 in the reply filed on February 22, 2005 is acknowledged.

### ***Claim Objections***

4. Claim 25 is objected to because of the following informality: please substitute "partial" (see line 8 and line 10) with --stemless--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 4-6, 8-25, 28-39, 41-43, 50-52, 54, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kinnet (US 4,550,450 A; cited in Applicant's IDS) in view of Pascarella et al. (US 5,326,366 A; cited in Applicant's IDS), Swanson et al. (US 4,042,980 A; cited in Applicant's IDS), and Chiron-Werke (DE 1164019; cited in Applicant's IDS).

As seen in Figures 1, 2, 5, and 6, Kinnet discloses a total shoulder arthroplasty apparatus comprising a stemless, partial humeral head fixation (humeral component 10) for coupling to a cut humeral surface (see Figure 1), wherein the partial humeral head fixation includes a partial humeral head (main body portion 20) including a base surface (= root or base wall) and a rotationally-stabilizing (see column 4, lines 40-42) base extension (fixation post/keel 21) protruding therefrom for impaction into a cancellous region of the cut humeral surface (see Figure 1; see entire document). Kinnett also discloses the claimed method of implanting the total shoulder arthroplasty apparatus (see columns 5-7). Kinnett further discloses the use of a template punch (see column 6, lines 40-51). The base extension is impacted and non-intramedullary (see column 7, lines 13-27; see entire document).

Although Kinnett shows the fixation post/keel 21 as having a slight depression (see Figure 1) and also that the fixation post/keel "provides increased mechanical advantages against torque and provides increased surface area of fixation" (see column 4, lines 40-42) and also that it prevents dislocation (see column 4, lines 50-53), he/she does not particularly disclose the base extension as including a plurality of fins forming a cruciate/cruciform shape.

However, from a structural point of view, attachment/anchoring means (anti-rotation means) for bone engaging orthopedic implants comprising a cruciate/cruciform shape are well

known in the art. For example, Pascarella et al. '366 teach a bone engaging orthopedic implant/device (see Figures 3 and 5) comprising a base extension (stem 30) including a plurality of fins (planar, triangular fins 32, 34, 36, and 38) for anchoring in cancellous bone (see column 3, lines 26-29). The orientation of said fins forms a cruciate/cruciform shape (Figure 5) in order to provide maximum anchorage of the implant, to prevent rotation of the implant, and to provide minimal disturbance of the endosteal blood supply of the anchoring area (see column 3, lines 49-57). Therefore, it would have been obvious to a person having ordinary skill in the art to have combined the teaching of a base extension (attachment/anchoring means) including a plurality of fins forming a cruciate/cruciform shape, as taught by Pascarella et al. '366, with the prosthetic orthopedic device of Kinnett, in order to provide maximum anchorage of the implant, to prevent rotational motion of the implant relative to the anchor area/site (i.e., cut humeral surface), and to provide minimal disturbance of the endosteal blood supply of the anchoring area.

Kinnett does not disclose the fixation keel 21 as been linear. However, Swanson et al. and Chiron-Werke teach at least one linear fin extending from the base of the prosthetic orthopedic device in order to anchor the prosthetic orthopedic device and prevent or limit rotational motion of it relative to the anchor area/site (see Swanson et al.'s column 3, lines 3-8; see Chiron-Werke entire document). Therefore, it would have been obvious to a person of ordinary skill in the art to have combined the teaching of at least one linear fin extending from the base of the prosthetic orthopedic device, as taught by Swanson et al. and Chiron-Werke, with the prosthetic orthopedic device of Kinnett, in order to anchor the prosthetic orthopedic device and prevent or limit rotational motion of it relative to the anchor area/site (i.e., cut humeral surface).

***Response to Arguments***

7. Applicant's arguments with respect to claims 1, 8, 16, 23-25, 31, 42, 43, 50, and 54 have been considered but are moot in view of the new ground(s) of rejection.

**Conclusion**

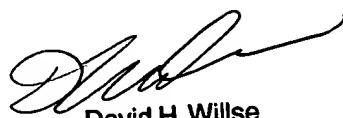
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javier G. Blanco whose telephone number is 571-272-4747. The examiner can normally be reached on M-F (7:30 a.m.-4:00 p.m.), first Friday of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9306 for regular communications and After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

JGB



May 5, 2005



David H. Willse  
Primary Examiner